Union Calendar No. 258

110TH CONGRESS 1ST SESSION

H. R. 3796

[Report No. 110-410]

To amend the Worker Adjustment and Retraining Notification Act to minimize the adverse effects of employment dislocation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 2007

Mr. George Miller of California (for himself, Ms. Kaptur, Mr. Kildee, Mr. Bishop of New York, Mrs. McCarthy of New York, Ms. Sheaporter, Mr. Kucinich, Mr. Davis of Illinois, Mr. Grijalva, and Ms. Woolsey) introduced the following bill; which was referred to the Committee on Education and Labor

OCTOBER 25, 2007

Additional sponsors: Mr. Hare, Mr. Sarbanes, Ms. Linda T. Sánchez of California, and Ms. Hirono

October 25, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on October 10, 2007]

A BILL

To amend the Worker Adjustment and Retraining Notification Act to minimize the adverse effects of employment dislocation, and for other purposes.

1	Be it enacted by the Senate and House of Representa-			
2	tives of the United States of America in Congress assembled,			
3	SECTION 1. SHORT TITLE.			
4	This Act may be cited as the "Early Warning and			
5	Health Care for Workers Affected by Globalization Act".			
6	SEC. 2. AMENDMENTS TO THE WARN ACT.			
7	(a) Definitions.—			
8	(1) Employer, plant closing, and mass lay-			
9	OFF.—Paragraphs (1) through (3) of section 2(a) of			
10	the Worker Adjustment and Retraining Notification			
11	Act (29 U.S.C. 2101(a)(1)-(3)) are amended to read			
12	as follows:			
13	"(1) the term 'employer' means any business en-			
14	terprise that employs 100 or more employees;			
15	"(2) the term 'plant closing' means the perma-			
16	nent or temporary shutdown of a single site of em-			
17	ployment, or of one or more facilities or operating			
18	units within a single site of employment, which re-			
19	sults in an employment loss at such site, during any			
20	30-day period, for 25 or more employees;			
21	"(3) the term 'mass layoff' means a reduction in			
22	force at a single site of employment which results in			
23	an employment loss at such site, during any 30-day			
24	period, for 25 or more employees.".			
25	(2) Secretary of Labor.—			

1	(A) Definition.—Paragraph (8) of such
2	section is amended to read as follows:
3	"(8) the term 'Secretary' means the Secretary of
4	Labor or a representative of the Secretary of Labor.".
5	(B) Regulations.—Section 8(a) of such
6	Act (29 U.S.C. 2107(a)) is amended by striking
7	$\it ``of\ Labor".$
8	(3) Conforming amendments.—
9	(A) Notice.—Section 3(d) of such Act (29
10	$U.S.C.\ 2102(d))$ is amended by striking out ",
11	each of which is less than the minimum number
12	of employees specified in section $2(a)(2)$ or (3)
13	but which in the aggregate exceed that minimum
14	number," and inserting "which in the aggregate
15	exceed the minimum number of employees speci-
16	fied in section $2(a)(2)$ or (3) ".
17	(B) Definitions.—Section 2(b)(1) of such
18	Act (29 U.S.C. 2101(b)(1)) is amended by strik-
19	ing "(other than a part-time employee)".
20	(b) Notice.—
21	(1) Notice period.—
22	(A) In General.—Section 3 of the Worker
23	Adjustment and Retraining Notification Act (29
24	U.S.C. 2102) is amended by striking "60-day pe-

1	riod" and inserting "90-day period" each place				
2	it appears.				
3	(B) Conforming amendment.—Section				
4	5(a)(1) of such Act (29 U.S.C. 2104(a)(1)) is				
5	amended in the matter following subparagraph				
6	(B), by striking "60 days" and inserting "90				
7	days".				
8	(2) Recipients.—Section 3(a) of such Act (29				
9	U.S.C. 2102(a)) is amended—				
10	(A) in paragraph (1), by striking "or, if				
11	there is no such representative at that time, to				
12	each affected employee; and" and inserting "and				
13	to each affected employee;"; and				
14	(B) by redesignating paragraph (2) as				
15	paragraph (3) and inserting after paragraph (1)				
16	$the\ following:$				
17	"(2) to the Secretary; and".				
18	(3) Information regarding benefits and				
19	SERVICES AVAILABLE TO WORKERS AND DOL NOTICE				
20	TO CONGRESS.—Section 3 of such Act (29 U.S.C.				
21	2102) is further amended by adding at the end the				
22	following:				
23	"(e) Information Regarding Benefits and Serv-				
24	ICES AVAILABLE TO EMPLOYEES.—Concurrent with or im-				
25	mediately after providing the notice required under sub-				

1	section (a)(1), an employer shall provide affected employees				
2	with information regarding the benefits and services avail-				
3	able to such employees, as described in the guide compiled				
4	by the Secretary under section 12.				
5	"(f) DOL Notice to Congress.—As soon as prac-				
6	ticable and not later than 15 days after receiving notifica-				
7	tion under subsection (a)(2), the Secretary of Labor shall				
8	notify the appropriate Senators and Members of the House				
9	of Representatives who represent the area or areas where				
10	the plant closing or mass layoff is to occur.".				
11	(c) Enforcement.—				
12	(1) Amount.—Section 5(a)(1) of the Worker Ad-				
13	justment and Retraining Notification Act (29 U.S.C.				
14	2104(a)(1)) is amended—				
15	(A) in subparagraph (A)—				
16	(i) by striking "back pay for each day				
17	of violation" and inserting "two days' pay				
18	multiplied by the number of calendar days				
19	short of 90 that the employer provided no-				
20	tice before such closing or layoff"; and				
21	(ii) in clause (ii), by striking "and" at				
22	the end thereof;				
23	(B) by redesignating subparagraph (B) as				
24	$subparagraph\ (C);$				

1	(C) by inserting after subparagraph (A) the
2	following:
3	"(B) interest on the amount described in sub-
4	paragraph (A) calculated at the prevailing rate;
5	and"; and
6	(D) by striking the matter following sub-
7	paragraph (C) (as so redesignated).
8	(2) Exemption.—Section $5(a)(4)$ of such Act
9	(29 U.S.C. 2104(a)(4)) is amended by striking "re-
10	duce the amount of the liability or penalty provided
11	for in this section" and inserting "reduce the amount
12	of the liability under subparagraph (C) of paragraph
13	(1) and reduce the amount of the penalty provided for
14	in paragraph (3)".
15	(3) Administrative complaint.—Section
16	5(a)(5) of such Act (29 U.S.C. 2104(a)(5)) is amend-
17	ed—
18	(A) by striking "may sue" and inserting
19	"may,";
20	(B) by inserting after "both," the following:
21	"(A) file a complaint with the Secretary alleging
22	a violation of section 3, or (B) bring suit"; and
23	(C) by adding at the end thereof the fol-
24	lowing new sentence: "A person seeking to en-
25	force such liability may use one or both of the

1	enforcement mechanisms described in subpara-
2	graphs (A) and (B).".
3	(4) Action by the secretary.—Section 5 of
4	such Act (29 U.S.C. 2104) is amended—
5	(A) by redesignating subsection (b) as sub-
6	section (d); and
7	(B) by inserting after subsection (a) the fol-
8	lowing new subsections:
9	"(b) Action by the Secretary.—
10	"(1) Administrative action.—The Secretary
11	shall receive, investigate, and attempt to resolve com-
12	plaints of violations of section 3 by an employer in
13	the same manner that the Secretary receives, inves-
14	tigates, and attempts to resolve complaints of viola-
15	tions of sections 6 and 7 of the Fair Labor Standards
16	Act of 1938 (29 U.S.C. 206 and 207).
17	"(2) Subpoend powers.—For the purposes of
18	any investigation provided for in this section, the
19	Secretary shall have the subpoena authority provided
20	for under section 9 of the Fair Labor Standards Act
21	of 1938 (29 U.S.C. 209).
22	"(3) Civil Action.—The Secretary may bring
23	an action in any court of competent jurisdiction to
24	recover on behalf of an employee the backpay, interest,

- benefits, and liquidated damages described in sub section (a).
- 3 "(4) Sums recovered by 4 the Secretary on behalf of an employee under sub-5 paragraphs (A), (B), and (D) of section 5(a)(1) shall 6 be held in a special deposit account and shall be paid, 7 on order of the Secretary, directly to each employee 8 affected. Any such sums not paid to an employee be-9 cause of inability to do so within a period of 3 years, 10 and any sums recovered by the Secretary under sub-11 paragraph (C) of section 5(a)(1), shall be credited as 12 an offsetting collection to the appropriations account 13 of the Secretary of Labor for expenses for the admin-14 istration of this Act and shall remain available to the 15 Secretary until expended.
 - "(5) ACTION TO COMPEL RELIEF BY SEC-RETARY.—The district courts of the United States shall have jurisdiction, for cause shown, over an action brought by the Secretary to restrain the withholding of payment of back pay, interest, benefits, or other compensation, plus interest, found by the court to be due to employees under this Act.

23 "(c) Limitations.—

"(1) LIMITATIONS PERIOD.—An action may be brought under this section not later than 2 years after

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- the date of the last event constituting the alleged violation for which the action is brought.
- "(2) COMMENCEMENT.—In determining when an action is commenced under this section for the purposes of paragraph (1), it shall be considered to be commenced on the date on which the complaint is filed.
- "(3) Limitation on private action while ac-8 9 TION OF SECRETARY IS PENDING.—If the Secretary 10 has instituted an enforcement action or proceeding 11 under subsection (b), an individual employee may not 12 bring an action under subsection (a) during the pend-13 ency of the proceeding against any person with re-14 spect to whom the Secretary has instituted the pro-15 ceeding.".
- (d) Posting of Notices; Penalties.—Section 11 of
 the Worker Adjustment and Retraining Notification Act (29)
 U.S.C. 2101 note) is amended to read as follows:
- 19 "SEC. 11. POSTING OF NOTICES; PENALTIES.
- "(a) Posting of Notices.—Each employer shall post and keep posted in conspicuous places upon its premises where notices to employees are customarily posted a notice to be prepared or approved by the Secretary setting forth excerpts from, or summaries of, the pertinent provisions of

- 1 this chapter and information pertinent to the filing of a
- 2 complaint.
- 3 "(b) Penalties.—A willful violation of this section
- 4 shall be punishable by a fine of not more than \$500 for
- 5 each separate offense.".
- 6 (e) Non-Waiver of Rights and Remedies; Infor-
- 7 MATION REGARDING BENEFITS AND SERVICES AVAILABLE
- 8 to Employees.—Such Act is further amended by adding
- 9 at the end the following:
- 10 "SEC. 12. RIGHTS AND REMEDIES NOT SUBJECT TO WAIVER.
- 11 "(a) IN GENERAL.—The rights and remedies provided
- 12 under this Act (including the right to maintain a civil ac-
- 13 tion) may not be waived, deferred, or lost pursuant to any
- 14 agreement or settlement other than an agreement or settle-
- 15 ment described in subsection (b).
- 16 "(b) AGREEMENT OR SETTLEMENT.—An agreement or
- 17 settlement referred to in subsection (a) is an agreement or
- 18 settlement negotiated by the Secretary, an attorney general
- 19 of any State, or a private attorney on behalf of affected
- 20 employees.
- 21 "SEC. 13. INFORMATION REGARDING BENEFITS AND SERV-
- 22 ICES AVAILABLE TO WORKERS.
- 23 "The Secretary of Labor shall maintain a guide of ben-
- 24 efits and services which may be available to affected em-
- 25 ployees, including unemployment compensation, trade ad-

- 1 justment assistance, COBRA benefits, and early access to
- 2 training and other services, including counseling services,
- 3 available under the Workforce Investment Act of 1998. Such
- 4 guide shall be available on the Internet website of the De-
- 5 partment of Labor and shall include a description of the
- 6 benefits and services, the eligibility requirements, and the
- 7 means of obtaining such benefits and services. Upon receiv-
- 8 ing notice from an employer under section 3(a)(2), the Sec-
- 9 retary shall immediately transmit such guide to such em-
- 10 ployer.".
- 11 (e) Notice Excused Where Caused by Terrorist
- 12 Attack.—Section 3(b)(2) of the Worker Adjustment and
- 13 Retraining Notification Act (29 U.S.C. 2102(b)(2)) is
- 14 amended by adding at the end the following new subpara-
- 15 graph:
- 16 "(C) No notice under this Act shall be required if the
- 17 plant closing or mass layoff is due directly or indirectly
- 18 to a terrorist attack on the United States.".
- 19 SEC. 3. EXTENSION OF COBRA BENEFITS FOR CERTAIN IN-
- 20 **DIVIDUALS CERTIFIED AS TAA ELIGIBLE.**
- 21 (a) Amendments to the Employee Retirement
- 22 Income Security Act of 1974.—
- 23 (1) Special rule for qualified taa eligible
- 24 EMPLOYEES.—

1	(A) In General.—Section $602(2)(A)$ of the
2	Employee Retirement Income Security Act of
3	1974 (29 U.S.C. 1162(2)(A)) is amended—
4	(i) by moving clause (v) to after clause
5	(iv) and before the flush left sentence begin-
6	ning with "In the case of a qualified bene-
7	ficiary"; and
8	(ii) by inserting after clause (v) the
9	following new clause:
10	"(vi) Special rule for qualified
11	TAA ELIGIBLE EMPLOYEES.—In the case of
12	a qualifying event described in section
13	603(2), clauses (i) and (ii) shall not apply
14	to a qualified TAA eligible employee (as de-
15	fined in section 607(6)).".
16	(B) Qualified taa eligible employee
17	Defined.—Section 607 of such Act (29 U.S.C.
18	1167) is amended by adding at the end the fol-
19	lowing new paragraph:
20	"(6) Qualified taa eligible employee.—The
21	term 'qualified TAA eligible employee' means a cov-
22	ered employee, with respect to a qualifying event, if—
23	"(A) the qualifying event is attributable to
24	the conditions specified in section 222 of the
25	Trade Act of 1974 (19 U.S.C. 2272) based on

1	which the Secretary of Labor has certified a
2	group of workers as eligible to apply for adjust-
3	$ment\ assistance\ under\ subchapter\ A\ of\ chapter\ 2$
4	of title II of such Act;
5	"(B) such certification applies to the cov-
6	ered employee; and
7	"(C) as of the date of such qualifying event
8	the covered employee has attained age 55 or has
9	completed 10 or more years of service with the
10	employer.".
11	(2) Conforming amendments.—Section
12	602(2)(A) of such Act (29 U.S.C. 1162(2)(A)) is fur-
13	ther amended—
14	(A) in clause (i), by striking "In the case
15	of" and inserting "Subject to clause (vi), in the
16	case of"; and
17	(B) in clause (ii), by striking "If a quali-
18	fying event" and inserting "Subject to clause
19	(vi), if a qualifying event".
20	(b) Effective Date.—
21	(1) General rule.—The amendments made by
22	this section shall apply for plan years beginning on
23	or after January 1, 2008.
24	(2) Special rule for collective bargaining
25	AGREEMENTS.—In the case of a group health plan

1	maintained pursuant to one or more collective bar-					
2	gaining agreements between employee representatives					
3	and one or more employers ratified before the date of					
4	the enactment of this Act, the amendments made by					
5	this section shall not apply to plan years beginning					
6	before the earlier of—					
7	(A) the later of—					
8	(i) the date on which the last of the col-					
9	lective bargaining agreements relating to					
10	the plan terminates (determined without re-					
11	gard to any extension thereof agreed to after					
12	the date of the enactment of this Act), or					
13	(ii) July 1, 2008, or					
14	(B) the date which is 3 years after the date					
15	of the enactment of this Act.					
16	SEC. 4. EFFECTIVE DATE.					
17	Except as otherwise provided in this Act, the provi-					
18	sions of this Act, and the amendments made by this Act,					
19	shall take effect on the date of the enactment of this Act.					

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[Report No. 110-410]

A BILL

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